'control' within the meaning of section 408 of the Act. So long as the interest is substantial, we believe it should ultimately be eliminated. This policy is soundly rooted in the desire to (a) avoid the danger of subsidy from the United States taxpayer finding its way into foreign air carriers, and (b) prevent interference in the negotiation of suitable agreements with foreign governments for the exchange of operating rights. Moreover, it is the affiliation of American air carriers with foreign air carriers that has given rise to the problem of foreign air carriers trading upon this affiliation, and the attempt to control this matter through restrictive conditions. To the extent that these affiliations are eliminated, there will be no need to face the problem of foreign air carriers attracting traffic on the basis of relationships with United States carriers." 20 C.A.B. (1955) 746, 747.

Still later the Civil Aeronautics Board issued a foreign air carrier permit to Compañia de Aviación "Faucett" to operate between Peru and Miami, Florida, under the terms of the bilateral Air Transport Agreement between the United States and Peru (U.S. TIAS 1587). *Compania de Aviacion "Faucett", S.A., Permit to Foreign Air Carrier*, 34 C.A.B. (1961) 296. The Board limited the permit to 5 years, not because there was not presently substantial ownership and control in Peruvian citizens but because a minority stock interest was held by Panagra, and the Board wished to be able to review the situation with respect to ownership and control after a period of time during which Faucett, Panagra, and Braniff would be competing for the same business to and from Miami. In short, the ownership-and-control requirement is a continuing one, not one which is resolved permanently when the air carrier first starts operations.

For a related aspect of the relationship between a U.S. airline and a foreign airline *i.e.*, the question of jurisdiction over the foreign airline, see *Lawson* v. *Pan American World Airways, Inc.*, holding that a New York court acquired jurisdiction *in personam* over Panair do Brasil through service of a summons upon Pan American as Panair's agent. 216 N.Y.S. 2d 549 (N.Y. Sup. Ct. 1961).

Sovereign immunity

As indicated in the instance of Línea Aérea Nacional de Chile, *supra*, many cases arise where airlines designated for service to the United States under bilateral agreements are substantially owned by the government designating the airline rather than by nationals of that government. For this reason one of the requirements uniformly imposed by the Civil Aeronautics Board in granting foreign air carrier permits is that the permit include a so-called "sovereign immunity" clause. That clause, in the permit issued to Línea Aérea Nacional de Chile, for example, read:

"By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit." (26 C.A.B. (1958) 604, 607.)

In one instance the waiver of sovereign immunity was handled on a government-to-government basis instead of in the foreign air carrier permit. In connection with renewal of the permit for K.L.M. Royal

Dutch Airlines, the examiner's findings and conclusions, adopted by the Civil Aeronautics Board, included the following statements:

> "K.L.M. has requested that the customary provisions in foreign air carrier permits relative to the waiver of sovereign immunity be omitted from its authority since there is currently in effect an exchange of notes on this subject between the Governments of the United States and the Netherlands. K.L.M. made a similar proposal in connection with the renewal of its Miami-Netherlands Antilles service in 1952 and the Board, in deciding this case, said at that time that it would entertain a request by the applicant for removal of this condition in the event of a satisfactory exchange of notes on the subject between the Governments of the United States and the Netherlands.
>
> "It appears that in an exchange of notes, the Governments of the United States and the Netherlands have agreed that neither will assert on behalf of any air carrier of its nationality the defense of sovereign immunity, nor will either authorize any air carrier of its nationality to assert such defense in its own behalf [U.S. TIAS 2828, 4 UST 1610]. In the light of this international agreement, the question arises as to the necessity for provisions relative to the waiver of sovereign immunity. . . .
>
> "While as a matter of policy, the provisions relative to waiver of sovereign immunity should be incorporated in foreign air carrier permits, it would appear that where there is an exchange of notes, such as in this case, such provisions are superfluous. The evidence discloses that K.L.M. is a private corporation and cannot in its own right assert the defense of sovereign immunity. The Government of the Netherlands has agreed that it will not assert this defense nor permit K.L.M. to do so if it could. In this circumstance, the public is protected by the word of the Netherlands Government and no such provisions are needed in the permits. If there is an abrogation of agreement then the Board, reserving as it will the right to prescribe reasonable terms and conditions, may reimpose the necessary conditions."

K.L.M. Royal Dutch Airlines, Foreign Air Carrier Permit, 25 C.A.B. (1957) 438, 448.

In *Como etc.* v. *Linee Aeree Italiane (Alitalia), Douglas Aircraft Co., Inc., and Curtiss-Wright Corporation*, the court, in denying a motion by the plaintiffs to sever and give priority to the claim of one plaintiff against Alitalia from the other claims of all the plaintiffs against all the defendants including Alitalia, stated:

> ". . . Plaintiffs upon the current application attach copies of correspondence from the United States State Department and the Irish government tending to support their contention that the Italian government which has a controlling interest in Alitalia is responsible for plaintiffs' inability to gain access to the Irish government's reports of its investigation of the airplane crash at Shannon, Ireland. Plaintiffs further note persuasively that the CAB in granting a permit to Alitalia to engage in foreign air transportation from points in Italy and intermediate points in France, England, Ireland and Canada to Boston and New York required the carrier to waive any right to assert